

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554

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In the Matter of )  
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Implementation of Sections )  
of the Cable Television )  
Consumer Protection and )  
Competition Act of 1992 )  
 )  
Rate Regulation )  
 )  
TO: The Commission )

MM Docket No. 92-266

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS OF THE  
CITY OF WATERTOWN, NEW YORK

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### **SUMMARY**

The City of Watertown, New York urges that the Commission, in adopting rules to implement the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992, develop rules which will provide the consumer protection envisioned by Congress with the minimum practicable administrative and financial burdens upon local governments and cable systems. The Commission must not lose sight of the fact that the cost of the new rate making and other regulatory procedures must ultimately be borne by the very people whom the Act seeks to protect.

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**REPLY COMMENTS OF THE  
CITY OF WATERTOWN, NEW YORK**

The City of Watertown, New York, by its attorneys and pursuant to Commission Rule 1.415, submits the following reply comments in the captioned proceeding, see Notice of Proposed Rule Making ("Notice"), released December 24, 1992, FCC 92-544.

**I. The City of Watertown's Interest**

1. Watertown is a community of approximately 30,000 residents located some 70 miles north of Syracuse, New York. The Watertown area receives over-the-air television broadcast service from two local commercial television stations (a CBS network affiliate and an independent station), one local educational television station and a commercial television station in Kingston, Ontario (a CBC network affiliate). Some areas not too far south of Watertown also receive acceptable quality, over-the-air signals from one or more of the Syracuse television stations. However, in Watertown and its immediate environs, it is necessary to utilize a large roof-top antenna to receive

signals of acceptable quality from any Syracuse station. Such antennas are not widely used in this area.

2. Watertown and several nearby small communities (including, for example, Black River, Brownville, Town of LeRay, and Piller Point) receive cable television service from Cable Systems of Watertown. The firm serves approximately 15,000 subscribers in this area. It is owned by one of the larger multiple system owners, Paragon Communications.

3. Cable television service provides a very important supplement to the limited over-the-air television service available in this area. The existence of reliable, reasonably priced cable service is therefore of substantial importance to area residents and thus local franchising authorities.

## II. Summary of Position

4. In these difficult economic times, Watertown would much prefer not to assume any additional cable television regulatory burdens. However, it appears that implementation of the Cable Television Consumer Protection and Competition Act of 1992 ("Act") will inevitably place some additional regulatory burdens on Watertown.

5. Watertown presently expects to assume responsibility for the regulation of cable television basic service rates under the Act. However, it urgently requests that the Commission -- in this proceeding and all of the other rule makings it is conducting pursuant to the Act -- adopt rules which:

- (a) can be implemented in an orderly manner pursuant to a reasonable time table;
- (b) can be readily understood not only by cable operators and local officials, but also by cable television service subscribers;
- (c) minimize the financial and administrative burdens which the regulatory process itself imposes upon both local officials and cable systems;
- (d) do not require local governments to undertake complex rate making procedures.

6. In adopting rules herein, the Commission must not lose sight of the fact that the cost of the new rate making and other regulatory procedures must ultimately be borne -- in the form of either higher taxes or higher charges for cable service -- by the very people whom the Act seeks to protect. The City of Watertown urges that the Commission strive to adopt rules herein which provide the protection envisioned by Congress with the minimum practicable administrative and financial burdens upon local governments and cable systems. Needlessly complex rules will frustrate rather than further the objective of controlling consumer costs.

### III. Jurisdictional and Procedural Matters

#### A. Shared Federal/Local Jurisdiction

7. Congress clearly intended that the Commission and local authorities exercise shared jurisdiction in regulating rates for basic cable television service. The Commission has tentatively

concluded (Notice, para. 15) that it has authority to regulate basic cable service rates only if it has disallowed or revoked a franchising authority's certification. The Commission bases this conclusion on an overly narrow reading of amended Section 623(a)(2)(A) of the Communications Act. The Commission's resolution of this jurisdictional question is contrary to the clear intent of Congress. Moreover, it would likely deprive residents in literally thousands of communities of any protection against unreasonable rates for basic cable service.

8. Watertown presently expects to regulate rates for cable service. However, if the Commission adopts unduly complex rate making or procedural requirements, it may conclude that it lacks the resources to assume this burden. There are literally thousands of communities across the country that are either in Watertown's situation or are so much smaller than Watertown that there is virtually no possibility that they will be able or willing to regulate cable television rates. Clearly, Congress did not intend that residents of these communities be deprived of the rate protection provided by the Act.

9. Watertown shares the view of the National Association of Telecommunications Officers and Advisors, et al.<sup>✓</sup> that the Commission is obligated under the Act to regulate rates in those

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<sup>✓</sup> The other parties to those comments are the National League of Cities, United States Conference of Mayors and the National Association of Counties (hereafter, "Telecommunications Officers, et al.").

areas of the country where local governments are unable or unwilling to assume the burden. The analysis of amended Sections 623(a)(2)(A) and (b)(1) of the Communications Act by the Telecommunications Officers, et al. (Comments, pp. 19-23), is cogent and fully supported by the legislative history.<sup>2/</sup> Watertown thus believes that the Commission erred in tentatively concluding that it only has authority to regulate rates in those communities where local government has sought and been denied certification to regulate rates.

B. Certification Procedures

10. The certification process must be designed with the goal of minimizing the regulatory burden upon both local officials and cable operators. The required certification should be relatively simple but not so abbreviated as to give rise to avoidable misunderstandings and disputes between local authorities and their cable systems.

(i) Local Government Election to Opt-Out

11. Watertown supports the recommendation of the New York State Consumer Protection Board (Comments, p. 6) and others that the certification process include a simple procedure by which communities can opt-out of rate regulation. The Commission

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<sup>2/</sup> See, also, comments herein of the Coalition of Municipal and Other Local Governmental Franchising Authorities (hereafter, "Coalition"), pp. 4-12.



should immediately assume responsibility for regulating basic service rates in any community which advises it that the community is unable or unwilling to assume the burden of rate regulation. Any community that opts out should be permitted in the future to regulate rates if it files the appropriate certification application and is approved by the Commission.

(ii) Prima Facie Showing as to the  
Absence of "Effective Competition"

12. A threshold question to be resolved in the certification process is, of course, whether the cable system faces "effective competition". The Telecommunications Officers, et al. urge (Comments, pp. 23-27) that the Commission establish a rebuttable presumption that "effective competition" does not exist. It further urges that cable operators be held to a relatively high standard of proof in order to rebut the presumption.

13. Watertown agrees with the Telecommunications Officers, et al. that the burden of proof should ultimately be upon a cable system to establish that it should be exempt from rate regulation because it faces effective competition. However, we believe it would facilitate the prompt resolution of this threshold issue if any franchising authority seeking to regulate rates is required to include in its certification a brief, prima facie showing that the cable system does not face effective competition. This showing should address each of the three criteria enumerated in amended Section 623(1) of the Communications Act.

14. In areas like Watertown, such a showing typically would not be more than a paragraph or two in length. Even in those more densely populated areas where some level of competitive service exists, a prima facie showing likely will not require more than a few paragraphs. The burden imposed upon franchising authorities by this approach would be significant only in those extraordinary cases where the existence or absence of effective competition may be a very close factual question. The cable system should then have the burden of proving that the prima facie showing is incorrect.

(iii) Relevant Area for Purposes of  
Determining "Effective Competition"

15. Watertown believes amended Section 623(1)(1) of the Communications Act should be construed narrowly and that the determination as to the presence or absence of "effective competition" should be based on the facts within each franchise area. In those cases where a single jurisdiction has awarded multiple franchises to different cable systems authorizing them to serve separate and distinct parts of the jurisdiction, each system's "franchise area" should be deemed to be only the area it is permitted to serve.

(iv) Certification of Multi-  
Jurisdictional Regulatory Programs

16. In situations, like Watertown, where a single cable operator serves a principal community and several nearby smaller communities, providing essentially the same service to each, the

rules should permit, but not require, the communities to create a mechanism for jointly regulating the system's rates via a single rate making proceeding. As noted by the Coalition (Comments, pp. 53-56) and the Telecommunications Officers, et al. (Comments, pp. 31), it would be a waste of both governmental and private resources if a single cable operator serving an area such as Watertown were subjected to multiple rate regulation proceedings in the principal community and each of the nearby communities. Watertown supports the detailed recommendations of the Coalition with respect to the procedures for creating and dissolving joint regulatory mechanisms.

C. Effective Date of New Rules

17. Watertown strongly disagrees with the recommendation of the Telecommunications Officers, et al. that the new rate regulation rules should become effective on April 3, 1993 (Comments, p. 90). The rules cannot, as a practical matter, be effectively implemented on April 3, 1993. In all probability, the text of the Commission's decision in this proceeding will not be released, let alone widely disseminated, until several days after it is adopted. For example, the Notice herein was not released until 14 days after its adoption. It will be even longer before any new Commission forms can be made available to local governments, the public and the cable industry.

18. Watertown submits that, in view of these and numerous other practical barriers to immediate implementation of the new rules, it would be counter productive for the Commission to

specify an April 3 effective date for the rules. Specifying such an effective date will create a totally unrealistic public expectation that rate regulation (and possibly rate reductions) will follow promptly after April 3, 1993. Watertown recommends that the rate regulation rules be made effective perhaps 60 to 120 days after they are adopted by the Commission. This will permit both the Commission and local communities to implement the rate regulation procedures in an orderly manner.

19. Importantly, such a "delayed" effective date will not have any actual adverse impact upon consumers since the certification and rate regulation process cannot possibly begin in any meaningful sense until some weeks after April 3.

#### IV. Rate Regulation Issues

##### A. Methodology for Regulating Charges for Basic Cable Service

20. To labor the obvious, the Commission's selection of one or more methodologies for regulating rates should ensure that: (i) rates for basic cable service are reasonable; and (ii) the minimum practicable administrative burden is placed on local governments and cable systems. Given the many different settings in which cable service is provided, it may well not be possible for the Commission to establish a single rate making methodology for use in all communities. Watertown supports the recommendation of the City of Baltimore (Comments, p. 7-10) that the Commission proceed as suggested in Paragraph 40 of the Notice and approve more than one methodology.

21. Watertown disagrees with the suggestion in Paragraph 40 of the Notice that cable systems should have a role in selecting the rate making methodology in each community. Local governments, rather than cable systems, should select a rate making methodology from among those approved by the Commission. Absent extraordinary circumstances, each local governmental unit should consistently apply the same methodology.

B. Rates for Equipment

22. Watertown shares the view expressed by the Consumer Electronic Group of the Electronic Industries Association and other parties that Congress intended to separate charges for equipment and its installation from other charges for both basic and premium services. Equipment and installation charges should be "unbundled" and set at the cable system's cost plus a reasonable profit. Subscribers should be ensured the freedom to chose equipment and installation from alternative vendors.

C. Small System Exemption

23. Amended Section 623(i) of the Communications Act requires that the Commission take steps to minimize the regulatory burden upon cable systems with less than 1,000 subscribers. However, the Act does not make clear how subscribers are to be counted for purposes of this statutory provision. Watertown agrees with the recommendation of the Coalition (Comments, pp. 65-66) and others that the small system exemption should be applied only to stand-alone cable systems

having less than 1,000 subscribers which are not owned by multiple system owners. In the absence of effective competition, a cable operator having several thousand subscribers located in several different jurisdictions in a compact geographic area should be subject to rate regulation throughout that service area if it offers service through what is, in practical effect, a single system operating under multiple franchises. Rates should be regulated in all franchise areas even if the operator has less than 1,000 subscribers in some of the areas.

24. The system serving Watertown and environs serves a total of some 15,000 subscribers in several separate franchise areas through what is publicly perceived to be a single system offering substantially identical service throughout the area. Several of these areas have less than 1,000 subscribers. It would create substantial public confusion and dissatisfaction if rates were regulated for residents of Watertown but not regulated for their neighbors in nearby, small franchise area where the cable system has less than 1,000 subscribers.

25. A second question with respect to small systems is whether they should be: (i) entirely exempted from rate regulation; or (ii) subjected only to some limited form of rate regulation. Contrary to the views of the Coalition (Comments, pp. 59-64), Watertown submits that the very smallest stand-alone systems should be completely exempted from rate regulation. The Coalition may indeed be correct that some very small systems do charge unreasonable rates. However, for very small cable systems

and the communities they serve, the cost of conducting a meaningful rate regulation proceeding would likely far exceed any potential "savings" by cable subscribers through any rate reductions ordered or any rate increases barred as a result of the proceedings.

26. For the smallest systems (eg., less than 400 subscribers) and the communities they serve, even some limited rate regulation proceeding would be either: (i) a major administrative burden; or (ii) so superficial as to be meaningless. Importantly, such systems are relatively few and far between and, even in the aggregate, they serve only a tiny portion of all cable television subscribers.

27. It may be possible to subject systems serving between 400 and 1,000 subscribers to limited rate regulation that would be meaningful without imposing onerous burdens on both local government and the cable operator. However, Watertown remains concerned that even with these systems, any effective rate regulation scheme would impose burdens upon both the cable operator and the community which would far outweigh any benefit to cable subscribers.

D. "Uniform" Rates Under Section 623(d)

28. The legislative history makes clear that Congress intended Section 623(d) of the Act only to prevent cable operators from charging differing rates in different parts of their franchise area. The statutory provision should not be construed to mean that where a cable operator serves multiple,

nearby communities, rates must be uniform throughout the combined service area.

29. As noted, the cable system serving Watertown also provides essentially the same service to a number of nearby, small communities. Watertown will likely work with the surrounding communities in an attempt to establish a mechanism for cooperative rate regulation among the several jurisdictions. If such a mechanism is created, it will very probably result in uniform rates in all of the cooperating communities. However, if such a joint regulatory effort is not undertaken, there is no practical means of achieving uniform rates for basic service throughout the area unless those rates are imposed by the Commission. Watertown respectfully submits that result was not intended by Congress and would not serve the interest of local subscribers.

#### V. Conclusion

30. In view of the foregoing, Watertown urges that the Commission adopt rules herein consistent with the foregoing comments.

Respectfully submitted,

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February 11, 1993

**CERTIFICATE OF SERVICE**

I, Cynthia M. Jackson, hereby certify that a copy of the foregoing "Reply Comments of the City of Watertown, New York" was forwarded via first class U.S. mail, postage prepaid, this 11th day of February, 1993, to each of the following:

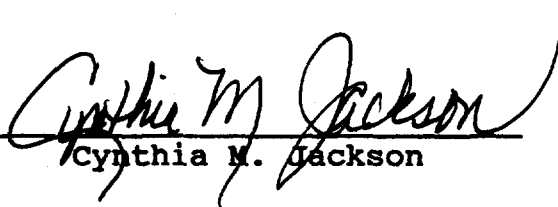
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